

URGENCY

NUMBER 120.1

TITLE: AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS MAKING FINDINGS AND EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES TO BECOME EFFECTIVE IMMEDIATELY

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of September 6, 2005, upon motion by Councilmember \_\_\_\_\_ and was adopted immediately as an interim ordinance pursuant to the provisions of California Government Code 65858(b). Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

WHEREAS, at its regular meeting on August 2, 2005, the City Council held a duly-noticed public hearing to consider the adoption of an interim ordinance imposing a temporary moratorium on the establishment and operation of medical marijuana dispensaries; and

WHEREAS, following discussion of the item, the City Council voted by a count of 4-1 to adopt the interim measure, which became effective immediately, imposing a 45-day moratorium on the establishment and operation of medical marijuana dispensaries within the City of Milpitas; and

WHEREAS, the 45-day moratorium will expire on September 17, 2005; and

WHEREAS, California Government Code section 65858(c) provides that after proper notice pursuant to California Government Code section 65090 and public hearing, a City Council may extend any interim ordinance adopted under section 65858 for a period of up to 22 months and fifteen days; and

WHEREAS, the City Council wishes to extend the initial period to allow staff additional time to study the potential impacts of allowing medical marijuana dispensaries in the City, to consult with other jurisdictions to collect data and information related to other Cities' experience regulating such dispensaries, and to prepare possible amendments to the City's zoning code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN  
AS FOLLOWS

Section 1.      Findings

A.      In 1996 the voters of the state of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et. seq. and entitled "The Compassionate Use Act of 1996").

B.      The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited, specified circumstances.

C.      On January 1, 2004, SB 420 went into effect. SB 420 was enacted by the State to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

D.      The Milpitas Municipal Code and Zoning Code are silent with regard to the regulation and location of medical marijuana dispensaries.

E.      The City of Milpitas has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries within the City.

F.      In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Milpitas to study the potential impact such facilities may have on the public health, safety and welfare and create suitable land use regulations for the permitting of medical marijuana dispensaries.

G.      Other California cities which have permitted the establishment of medical marijuana dispensaries have recognized an increase in crime, such as burglary, robbery and sale of illegal drugs in the areas immediately surrounding such medical marijuana dispensaries.

H. The City Council finds that it is necessary to study the possible adoption of amendments to the City's Zoning Code in order to adopt legislation which conforms with recently enacted SB 420 as well as recent state and federal case law.

I. Based on the foregoing, the City Council finds that issuing permits, business licenses or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and that therefore an extension of the temporary moratorium on the issuance of such permits, licenses and entitlements is necessary.

J. The Acting Planning and Neighborhood Services Director, in conjunction with the Interim City Manager and the City Attorney, are currently conducting a study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Zoning Code related to medicinal marijuana dispensaries.

## Section 2. Imposition of Moratorium

A. In accordance with the authority granted the City of Milpitas under Government Code Section 65858(b), from and after the date of this ordinance, no use permit, variance, building permit, or any other applicable entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of 22 months and fifteen days.

B. For purposes of this ordinance, "medical marijuana dispensary" means any facility or location where a primary caregiver intends to make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance with Health and Safety Code Section 11362.5 et seq., including but not limited to Health & Safety Code Section 11362.7 (d) (2) and (3). The terms "primary caregiver", "qualified patient", and "person with an identification card" shall be as defined in Health and Safety Code Section 11362.5 et seq.

C. For purposes of this ordinance, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

D. This ordinance is an interim ordinance adopted as an interim measure pursuant to the authority granted the City of Milpitas under Government Code Section 65858(b) and is for the immediate preservation of the public safety, health and welfare. The facts constituting the urgency are: California cities which have permitted the establishment of medical marijuana dispensaries have recognized that doing so has resulted in the creation of negative secondary effects such as an increase in crime, including burglary, robbery and the sale of illegal drugs, in the areas immediately surrounding medical marijuana dispensaries. The City of Milpitas has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries within the City. The City of Milpitas does not currently have standards in the Milpitas Zoning Code related to the location, operation and concentration of medical marijuana dispensaries within the City. Absent the adoption of this urgency ordinance, the

establishment and operation of medical marijuana dispensaries in the City would result in the harmful secondary effects identified above. As a result of the harmful secondary effects associated with medical marijuana dispensaries and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary to, in accordance with Government Code Section 65858, temporarily establish a 45-day moratorium on the establishment and operation of new medical marijuana dispensaries in the City pending the completion of the City's study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Zoning Code.

Section 3.      Compliance with California Environmental Quality Act

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Zoning Code review.

Section 4.      Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5.      Effective Date

This ordinance shall become effective immediately upon adoption if adopted by at least four-fifths vote of the City Council and shall be in effect for 22 months and fifteen days from the date of adoption.